

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>CITY VIEW FARMS, LLC</b> <b>Facility #60334</b>  <b>O'Brien County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2014-AFO- 01</b>
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TO: Ken Franken, Registered Agent  
City View Farms, LLC  
4131 Yellow Avenue  
Sutherland, Iowa 51058

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and City View Farms, LLC (City View) for the purpose of resolving violations resulting from a manure discharge that resulted in water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Jennifer Christian, Field Office 3  
Iowa Department of Natural Resources  
1900 North Grand –Gateway North Mall  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. City View owns and operates City View Farms East located at 4135 Yellow Avenue; Sutherland, Iowa (NE ¼ of the NW ¼ of Section 14, Grant Township, O'Brien County, Iowa). The facility houses 11,900 head of immature dairy cattle in open lots (11,900 animal units) and 3,600 head of immature dairy cattle in confinement buildings (3,600 animal units). The confinement manure is stored in an earthen manure storage basin and also in deep concrete pits under the buildings. The runoff from the open lot is treated by solid settling structures and three settled open feedlot effluent basins (SOFEB). The north and south SOFEBs were designed to be operated as a "System 4" which requires land applying effluent following each significant precipitation event. The east SOFEB was designed to be operated as a "System 3" which requires land applying effluent in April, July and October.

2. On May 30, 2013, Ken Franken, City View representative, visited DNR Field Office 3 and spoke to Jennifer Christian, DNR Field Office 3 environmental specialist, concerning the SOFEBs at City View Farms East and the large amount of rain that had been received. Mr. Franken stated that he still had a couple feet of storage in the SOFEBs, but was concerned about receiving more rain. Ms. Christian explained that the basin levels must be monitored and that the center pivots be utilized if needed.

3. On May 31, 2013, DNR Field Office 3 received a complaint stating that on May 27, 2013 City View Farms East discharged manure into Waterman Creek through two hoses in one of the manure structures. The complainant stated the discharge was discoloring the stream and causing a lot of foam. The complainant provided a photograph of the situation to DNR Field Office 3. The photograph showed a truck mud flap and two hoses discharging manure into the stream. In the photograph the stream was foamy.

4. On June 10, 2013, Ms. Christian investigated the complaint. She met with Mr. Franken and his son, Jamie Franken. Ms. Christian explained the purpose of her visit. Mr. Franken denied any knowledge of that type of discharge and offered to show Ms. Christian the manure storage structures at the facility. They first viewed the south SOFEB. This structure contains two basins that were connected in the middle. Ms. Christian did not observe any evidence of hoses discharging from this area. However, Mr. Franken stated that manure was discharging from the emergency outlet and they proceeded to the southeast corner of the basin. Ms. Christian noted effluent discharging from an 18 inch culvert that extended through the berm of the basin. The top of the culvert was approximately three feet from the top of the berm. The effluent flowed into a bog that eventually drained into Waterman Creek. Ms. Christian explained that the culvert should not be located in

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the berm and that it was an improper discharge. Mr. Franken stated that the culvert had been in place since he purchased the facility approximately thirteen years ago and he thought it had been approved by the DNR. Ms. Christian advised Mr. Franken to start dewatering the SOFEB with the center pivot as soon as possible.

5. Ms. Christian and Mr. Franken continued to the north SOFEB. The north SOFEB was completely full. The north end was slowly seeping over the top of the berm which was the lowest area of the basin due to years of settling. Ms. Christian recommended the area of the berm be built back up to the original elevation. Mr. Franken and Ms. Christian continued to walk along the west berm toward the southwest corner of the basin. This is the area that matched the photograph provided by the complainant. Ms. Christian observed a truck mud flap along the outer berm of the basin identical to the one in the photograph provided by the complainant. The two hoses were not present, but Ms. Christian observed the matted grass indicating the likely presence of the hoses as in the photograph. Mr. Franken agreed this was the same area as in the photograph, but denied any knowledge of the discharge with the two hoses.

6. While Ms. Christian and Mr. Franken were discussing the situation, Ms. Christian observed a small hose discharging effluent into the flooded, vegetated area and into Waterman Creek. The effluent caused the water in the flooded area to be brown and murky and smelled of cattle manure. Ms. Christian and Mr. Franken followed the hose roughly fifteen feet before it became buried in the toe of the SOFEB. Due to the condition of the hose and the vegetation that had grown on top of it, it appeared to have been there for years. The hose was not visible on the inner berm of the basin since the effluent level was to the top of the berm. Mr. Franken stated he had never seen this hose before and would question his employees about the presence of the hose. Ms. Christian explained that this was not a proper method of dewatering the SOFEB and the center pivot should be turned on immediately to draw down the liquid to stop the discharge and to determine the location of the buried hose. Ms. Christian collected a water sample from the flooded area as it entered Waterman Creek. The laboratory sample indicated an E.Coli concentration of 14,000 Col/100mL; an ammonia nitrogen concentration of 8.6 mg; and a biochemical oxygen demand concentration of 17 mg/L.

7. On June 27, 2013, Ms. Christian along with Michelle Sabatini, DNR Field Office 3 environmental specialist, met with Mr. Franken, his son, and Jeff Koops, environmental consultant from Farmer's Coop Society. Mr. Franken stated that his employees had admitted to placing the two hoses to dewater the north basin. The south basin had been dewatered to the point the discharge through the buried culvert had stopped. The group discussed that the culvert would be removed and packed with clay. The north basin was also drawn down enough to locate the buried hose. After digging for several minutes the hose appeared to be buried four feet down towards the middle of the earthen berm before it started to angle down toward the toe. Mr. Franken agreed to cut the hose where it started to angle downward and

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pour a bag of bentonite in the hose and around it. Ms. Christian stated the hole must be packed with clay and the part of the hose that extends out the toe of basin should be cut off, capped and covered with dirt.

8. On September 12, 2013, DNR issued a Notice of Violation letter to City View for the violations observed during DNR's investigation.

9. On January 20, 2011, DNR issued NPDES Permit #7160334 to City View for the facility. On November 1, 2013, DNR issued a renewal of the NPDES Permit. Due to the June 2013 discharge the permit incorporated the following requirement: the facility must remove the overflow discharge pipe by November 30, 2013 and recompact clay in the excavated trench. A permeability test on the recompact liner must be performed by an engineer as soon as possible and the results of the test reported to DNR Field Office 3.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.101(3) states that an open feedlot operation which has an animal unit capacity of 1,000 animals units or more shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. City View has been improperly discharging effluent into waters of the United States for several years. These discharges were not pursuant to the facility's NPDES permit. The above mentioned facts indicate violations of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. The water was discolored brown and smelled of manure. The above mentioned facts indicate violations of the general water quality criteria.

4. Section IV of the facility's NPDES permit stated that manure must be removed from the open feedlot effluent control structures and applied by land application in accordance with the following requirements: ...(2) settled open feedlot effluent basin – basin(s) must be emptied, based on the installed system designed and proposed by a licensed engineer and approved by the DNR. City View Farms East's SOFEBs were not designed to contain permanently and prohibited discharge

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devices installed. The above mentioned facts indicate violations of the facility's NPDES permit.

**V. ORDER**

THEREFORE, the DNR orders and City View agrees to do the following:

1. City View must operate and maintain the facility in compliance with all applicable state and federal regulations and permits;
2. City View must plug the buried pipe in the north SOFEB with benonite within 30 days of the date the Director signs this administrative consent order. City View must submit documentation to DNR Field Office 3 within 10 of plugging the buried pipe;
3. City View must hire a licensed professional engineer to design and submit plans and drawings to excavate the culvert in the south SOFEB and properly compact the soil. The plan of action, including the engineer's plans and drawings, for this requirement must be submitted to DNR Field Office 3 within 30 days of date the Director signs this administrative consent order;
4. City View shall pay an administrative penalty in the amount of \$10,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take

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enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." City View gained an economic benefit by failing to properly contain the manure from the facility. City View avoided land application costs for many years by discharging manure through the pipes and culvert as opposed to land application through the center pivot. The costs avoided include the fuel to operate the pivot, general equipment usage and employee costs. Based on the above facts, the economic benefit City View received was at least \$4,000.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Improper discharges of manure to waters of the state contribute to contaminants in both land and water resources of the state. DNR Field Office 3 documented effluent discharges that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Improperly discharging effluent from a permitted cattle facility limits the regulatory efforts of the DNR by directing time and effort away from the regular duties. Therefore, \$3,000.00 is assessed for this factor.

Culpability – City View has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. It is the facility's responsibility to ensure that the facility is properly operated and managed, including the handling of manure. Manure and effluent from the facility has been improperly discharged for many years. Therefore, \$3,000.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of City View. For that reason City View waives the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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Chuck Gipp  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 28<sup>th</sup> day of  
January, 2013.  
2014

Ken Franken  
City View Farms LLC  
CITY VIEW FARMS, LLC

Dated this 27 day of  
Dec, 2013.

Facility #60334; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.B and VIII.D.3.a